

SECOND REGULAR SESSION

# SENATE BILL NO. 895

92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATOR GOODE.

Pre-filed December 1, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

3147S.01I

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## AN ACT

To repeal section 407.020, RSMo, and to enact in lieu thereof twelve new sections relating to home loans, with an effective date and penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 407.020, RSMo, is repealed and twelve new sections enacted in lieu thereof, to be known as sections 407.020, 408.740, 408.742, 408.744, 408.746, 408.748, 408.750, 408.752, 408.754, 408.756, 408.758, and 408.760, to read as follows:

407.020. 1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice. The use by any person, in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri of the fact that the attorney general has approved any filing required by this chapter as the approval, sanction or endorsement of any activity, project or action of such person, is declared to be an unlawful practice. Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

2. Nothing contained in this section shall apply to[

(1)] the owner or publisher of any newspaper, magazine, publication or printed matter wherein such advertisement appears, or the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser[; or

(2) Any institution or company that is under the direction and supervision of the

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

director of the department of insurance, director of the division of credit unions, or director of the division of finance, unless the directors of such divisions specifically authorize the attorney general to implement the powers of this chapter or such powers are provided to either the attorney general or a private citizen by statute].

3. Any person who willfully and knowingly engages in any act, use, employment or practice declared to be unlawful by this section with the intent to defraud shall be guilty of a class D felony.

4. It shall be the duty of each prosecuting attorney and circuit attorney in their respective jurisdictions to commence any criminal actions under this section, and the attorney general shall have concurrent original jurisdiction to commence such criminal actions throughout the state where such violations have occurred.

5. It shall be an unlawful practice for any long-term care facility, as defined in section 660.600, RSMo, except a facility which is a residential care facility I or a residential care facility II, as defined in section 198.006, RSMo, which makes, either orally or in writing, representation to residents, prospective residents, their families or representatives regarding the quality of care provided, or systems or methods utilized for assurance or maintenance of standards of care to refuse to provide copies of documents which reflect the facility's evaluation of the quality of care, except that the facility may remove information that would allow identification of any resident. If the facility is requested to provide any copies, a reasonable amount, as established by departmental rule, may be charged.

6. Any long-term care facility, as defined in section 660.600, RSMo, which commits an unlawful practice under this section shall be liable for damages in a civil action of up to one thousand dollars for each violation, and attorney's fees and costs incurred by a prevailing plaintiff, as allowed by the circuit court.

**408.740. As used in sections 408.740 to 408.760, the following terms mean:**

(1) "Affiliate", any company that controls, is controlled by or is under common control with another company, as set forth in the Bank Holding Company Act of 1956, 12 U.S.C. 1841 et. seq., as amended from time to time;

(2) "Annual percentage rate", the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act, 15 U.S.C. 1601, et. seq., and the regulations promulgated thereunder by the Federal Reserve Board, as said act and regulations are amended from time to time;

(3) "Bona fide loan discount points", loan discount points knowingly paid by the borrower for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices for secondary mortgage market transactions;

(4) "Flipping", the making of a home loan to a borrower that refinances an existing home loan when the new loan does not have a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances;

(5) "High-cost home loan", a home loan in which the terms of the loan meet one or more of the following thresholds:

(a) The annual percentage rate of the home loan at consummation exceeds by five or more percentage points the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board, as of the week immediately preceding the week in which the interest rate for the loan is established; or

(b) The home loan is a variable rate loan in which the annual percentage rate can reasonably be expected to increase beyond the threshold established in paragraph (a) of this subdivision; or

(c) Potential or scheduled increases in the annual percentage rate of the home loan are not directly tied to future increases in a widely used federal or private market measurement that reflects the cost of borrowing money, such as the interest rate yield on United States Treasury securities, the federal funds rate, or the prime interest rate; or

(d) The total points and fees on the loan exceed:

a. Three percent of the total loan amount if the total loan amount is twenty thousand dollars or more;

b. Four percent of the total loan amount if the total loan amount is twenty thousand dollars or more and the loan is a purchase money loan guaranteed by the Federal Housing Administration or the Veterans' Administration; or

c. The lesser of five percent of the total loan amount or eight hundred dollars, if the total loan amount is less than twenty thousand dollars. The following discount points shall be excluded from the calculation of the total points and fees:

(i) Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

(ii) Up to and including one bona fide loan discount point payable by the

borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

(6) "Home loan", a loan, other than an open-end credit plan or a reverse mortgage transaction, where:

(a) The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association or some comparable entity designated by the division of finance;

(b) The borrower is a natural person;

(c) The debt is incurred by the borrower primarily for personal, family, or household purposes; and

(d) The loan is secured by a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling;

(7) "Lender", any entity which originated more than five home loans within the past twelve-month period or acted as an intermediary between originators and borrowers on more than five home loans within the past twelve-month period;

(8) "Obligor", each borrower, coborrower, cosigner, or guarantor obligated to repay a loan;

(9) "Points and fees":

(a) All items required to be disclosed pursuant to Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;

(b) All charges for items listed under Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender, otherwise, the charges are not included within the meaning of the points and fees;

(c) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction, not otherwise included in paragraph (a) or (b) of this subdivision;

(d) "Points and fees" shall not include:

a. Taxes, filing fees, recording and other charges and fees paid or to be paid

to public officials for determining the existence of or for perfecting, releasing or satisfying a security interest; and

b. Fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorney's fees, if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under paragraph (a) of this subdivision; title insurance premiums; and fire insurance and flood insurance premiums, provided that the conditions in Section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met;

(10) "Total loan amount", the same as the term is used in Section 226.32 of Title 12 of the Code of Federal Regulations, and the same shall be calculated in accordance with the Federal Reserve Board's Official Staff Commentary thereto.

408.742. 1. No prepayment fees or penalties shall be contracted by the borrower and lender with respect to any high-cost home loan.

2. No high-cost home loan may contain a payment schedule with regular periodic payments that result in an increase in the principal balance, a practice known as negative amortization.

3. No lender may knowingly or intentionally engage in the practice of flipping a home loan.

4. No lender may recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a consumer home loan that refinances all or any portion of such existing loan or debt.

5. No lender may make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the borrower's equity in the dwelling which secures repayment of the loan. An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, do not exceed fifty percent of the obligor's monthly gross income as verified by the credit application, the obligor's financial statement, a credit report, financial information provided to the lender by or on behalf of the obligor, or any other reasonable means; provided, no presumption of inability to make the

scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, exceed fifty percent of the obligor's monthly gross income.

6. No lender may charge a fee for a product or service where the product or service is not actually provided, or misrepresent the amount charged by or paid to a third party for a product or service.

7. No lender may make or cause to make, directly or indirectly, any false, deceptive or misleading statement or representation in connection with a residential loan transaction including, without limitation, a false, deceptive or misleading statement or representation regarding the borrower's ability to qualify for any mortgage product. A statement or representation is deceptive or misleading if it has the capacity or tendency to deceive or mislead a borrower or potential borrower. The director of the division of finance shall consider the following factors in deciding whether a statement or representation is deceptive or misleading: the overall impression that the statement or representation reasonably creates; the particular type of audience to which it is directed; and whether it may be reasonably comprehended by the segment of the public to which it is directed.

8. No lender may compensate, whether directly or indirectly, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by a residential mortgage or is being offered as security according to an application for a residential mortgage loan.

9. No lender may finance, directly or indirectly, any credit life, credit disability, or credit unemployment insurance, or any other life or health insurance premiums through a home loan or any payments directly or indirectly for any debt cancellation or suspension agreement or contract. Insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

10. No high-cost home loan contract in which blanks are left to be filled in after the contract is signed shall be enforceable under the law.

408.744. If the discussions between the lender and the borrower on a home loan are conducted primarily in a language other than English, the lender shall, before closing, provide an additional copy of the loan translated into the language in which the discussions were conducted.

408.746. 1. No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal

or irregular income of the borrower.

2. No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

3. No high-cost home loan may contain a provision that increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

4. No high-cost home loan may contain a provision which permits the lender, in its sole discretion, to increase the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule.

5. A lender may not charge a borrower any fees or other charges to modify, renew, extend or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.

6. A lender may not make a high-cost home loan without first receiving certification from a counselor approved by the United States Department of Housing and Urban Development that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.

7. No high-cost home loan may be subject to a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through the judicial process.

8. A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than by an instrument payable to the borrower or jointly to the borrower and the contractor, or at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender and the contractor prior to the disbursement.

408.748. 1. The provisions of section 408.746 shall apply to any person who in bad faith attempts to avoid its application by:

(1) Structuring a loan transaction as an open-end credit plan for the purpose and with the intent of evading sections 408.740 to 408.760 when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan; or

(2) Dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section; or

**(3) Any other such subterfuge.**

**2. A lender in a high-cost home loan who, when acting in good faith, fails to comply with section 408.746, will not be deemed to have violated this section if the lender establishes that either:**

**(1) Within thirty days of the loan closing and prior to the institution of any action, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower:**

**(a) Make the high-cost home loan satisfy the requirements of section 408.746; or**

**(b) Change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section; or**

**(2) The compliance failure was not intentional and resulted from the bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, and within sixty days after the discovery of the compliance failure and prior to the institution of any action pursuant to this section or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower:**

**(a) Make the high-cost home loan satisfy the requirements of section 408.746; or**

**(b) Change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of section 408.746.**

**3. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations pursuant to this section is not a bona fide error.**

**408.750. 1. Any person found by a preponderance of the evidence to have violated the provisions of sections 408.740 to 408.760 shall be liable to the borrower for the following:**

**(1) Actual damages, including consequential and incidental damages. The borrower shall not be required to demonstrate reliance in order to receive actual damages;**

**(2) Statutory damages equal to the finance charges agreed to in the home loan agreement, plus ten percent of the amount financed;**

**(3) Punitive damages, when the violation was intentional or reckless; and**



**(4) Costs and reasonable attorney's fees.**

**2. A borrower may be granted injunctive, declaratory and such other equitable relief as the court deems appropriate in an action to enforce compliance with sections 408.740 to 408.760.**

**3. The intentional violation of sections 408.740 to 408.760 renders the home loan agreement void, and the creditor shall have no right to collect, receive or retain any principal, interest or other charges whatsoever with respect to the loan, and the borrower may recover any payments made under the agreement.**

**4. The right of rescission granted under 15 U.S.C. 1601 et. seq. for violations of that law and all other remedies provided hereunder shall be available to a borrower by way of recoupment against a party foreclosing on the home loan or collecting on the loan, at any time during the term of the loan.**

**408.752. Violation of any provision of sections 408.740 to 408.760 shall be deemed an unlawful practice under sections 407.010 to 407.130, RSMo, and shall be subject to all penalties, remedies and procedures provided in sections 407.010 to 407.130, RSMo. The attorney general shall have all powers, rights and duties regarding violations of sections 408.740 to 408.760 as are provided in sections 407.010 to 407.130, RSMo, and shall have the rulemaking authority as provided in section 407.145, RSMo.**

**408.754. A lender shall not make investments that are backed by home loans that violate section 408.742 or 408.746.**

**408.756. 1. Lenders that are exempt from the reporting requirements of 12 U.S.C. 2803 solely because the home purchase loans, including refinancings, that the lender originated in the preceding calendar year totaled less than ten percent of its total loan origination volume measured in dollars, thereby qualifying for an exemption pursuant to Paragraph I.D. of Appendix A to 12 CFR Part 203, shall be required to report to the director of the division of finance the same information that other lenders are required to report pursuant to 12 U.S.C. 2803(b) to the appropriate federal agency.**

**2. Lenders shall submit the information required pursuant to subsection 1 of this section in the format established by the United States Department of Housing and Urban Development pursuant to 12 U.S.C. 2803(h)(5).**

**408.758. 1. Lenders shall report to the director of the division of finance the average and median interest rates of mortgage loans and home improvement loans that they originate grouped according to the categories established pursuant to 12 U.S.C. 2803(b)(4), census tract, income level, racial characteristics and gender.**

**2. In calculating the interest rate for variable rate loans to fulfill the requirements of subsection 1 of this section, lenders shall use the average interest**

rate on the variable rate loan for the twelve months of the reporting period established pursuant to 12 U.S.C. 2803(d), which is the calendar year.

3. Lenders shall submit the information required pursuant to subsection 1 of this section in a similar format to how the lender reports information to the appropriate federal agency pursuant to 12 U.S.C. 2803(h)(5) or to the division of finance pursuant to section 408.750.

408.760. The reporting requirements pursuant to sections 408.756 and 408.758 shall become effective one year following the effective date of this section.

Section B. The provisions of this act shall become effective January 1, 2005.

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